



In the  
SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1635

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TIVIAN LABORATORIES, INC.

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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ON WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIRST  
JUDICIAL CIRCUIT

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PETITION FOR CERTIORARI FILED APRIL 4,  
1979

APPENDIX

APPENDIX TO PETITION  
FOR WRIT OF CERTORARI

DOCKET ENTRIES:

1. On or about October 16, 1975, initial letter from Environmental Agency to Defendant.
2. Service of said letter on Defendant by U.S. Marshal on October 28, 1975.
3. Defendant was to provide certain information as requested by the letter to the "EPA" by November 7, 1975, and then by November 17, 1975.
4. Defendant sent letter to U.S. Marshall on November 1, 1975 declining to respond to "EPA'S" request.
5. On May 6, 1976, a complaint and summons were issued and served by plaintiff's agents.
6. On May 24, 1976, an answer, motion to dismiss, and counter claim were filed by the Vice President of Legal Affairs of the

of the defendant.

7. On May 28, 1976, plaintiff filed an objection to defendant's motion to dismiss.
8. On June 22, 1976, defendant filed a reply to plaintiff's objection to defendant's motion to dismiss.
9. On June 23, 1976, defendant filed Interrogatories against the plaintiff.
10. On July 7, 1976, defendant filed a motion to compel response to Interrogatories.
11. On July 9, 1976, plaintiff filed an objection to defendant's motion to compel.
12. On July 22, 1976, defendant filed a reply to plaintiff's objection.
13. On July 29, 1976, hearing before Judge Hagopian on defendant's motion. Ordered that Interrogatories be answered by the "EPA."

14. On August 12, 1976, plaintiff filed motion to default defendant on grounds that defendant failed to answer the complaint and summons.
15. On September 10, 1976, defendant filed a reply to plaintiff's motion for default judgment.
16. On September 16, 1976, defendant, filed a claim for dismissal for violation of court order compelling answers to Interrogatories.
17. On September 22, 1976, plaintiff filed objection to defendant's claim for dismissal.
18. On October 26, 1976, a hearing on defendant's claim for dismissal held before Judge Hagopian and ordered on November 2, 1976, to stay defendant's claim pending a disposition of plaintiff's motion for default judgment.

19. On December 8, 1976, Judge Pettine granted default judgment and struck all pleadings of defendant.
20. Defendant's claim for hearing with a competent and impartial judge filed December 30, 1976.
21. Conditional Notice of Appeal filed by President of Corporation (defendant) on December 20, 1976.
22. On February 4, 1977, notice of appeal and motion to set aside entry of default.
23. On February 8, 1977, plaintiff filed objection to set aside entry of default.
24. On April 14, 1977, defendant's motion to set aside entry of default.
25. On April 22, 1977, notice of withdrawal of appeal sent to Circuit Court of Appeals (First Circuit) and granted.
26. On October 24, 1977, defendant filed Interrogatories.

27. On November 28, 1977, plaintiff filed motion for summary judgment and motion for protective order.

28. On December 6, 1977, defendant filed objections to plaintiff's motions for summary judgment and protective order.

29. On December 19, 1977, Court ordered further memorandums on matters raised in plaintiff's motion for summary judgment and motion for protective order.

30. On January 4, 1978, defendant filed its further memorandum on the matters raised by plaintiff's motions.

31. On January 11, 1978, plaintiff filed its further memorandum on the matters raised on its motions for summary judgment and protective order.

32. On February 28, 1978, Court granted plaintiff's motion for summary judgment.

33. On March 7, 1978, defendant filed its notice of appeal from Court's granting of plaintiff's motion for summary judgment

34. On March 13, 1978, plaintiff filed its objection to defendant's motion for stay of order and judgment.

35. On March 23, 1978, Court denied defendant's motion for stay of order and judgment.

36. Defendant filed an appeal of its motion for stay of order and judgment with First Circuit Court of Appeals on April 6, 1978.

37. On April 6, 1978, defendant filed its Appendix to Brief with the First Circuit Court of Appeals.

38. Order of the Court denying appellant's motion for a stay of order and judgment of the District Court, requiring Tivian Laboratories to disclose to the EPA information concerning Tivian's use of certain chemicals, entered May 3, 1978.

39. Judgment of the Court of Appeals dated December 20, 1978, affirming the judgment of the District Court, except that the case is remanded to the District

Court to determine Vivian's claim that the compliance is unconstitutionally burdensome, entitling it to reimbursement as a matter of law.

40. Order of Court of Appeals, entered April 5, 1979, denying motion for rehearing denial of stay of enforcement of the order of December 20, 1978 pending ruling on written petitions for same.

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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No. 78-1109.

UNITED STATES OF AMERICA,  
Plaintiff, Appellee,

v.

VIVIAN LABORATORIES, INC.,  
Defendant, Appellant.

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ORDER OF COURT

Entered April 5, 1979

Upon request of appellant for  
"stay of enforcement order December 20,  
1978 pending ruling on written petitions

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for rehearing,"

It is ordered that said motion be,  
and the same hereby is, denied.

By the Court:

/s/ Dana H. Gallup  
Clerk.

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M A N D A T E

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

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No. 78-1109.

UNITED STATES OF AMERICA

Plaintiff, Appellee.

v.

TIVIAN LABORATORIES, INC.,

Defendant, Appellant.

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JUDGMENT

Entered December 20, 1978

This cause was submitted on briefs on  
appeal from the United States District  
Court for the District of Rhode Island.



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Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed in all respects, except the case is remanded to the District Court for the limited purpose of determining Tivian's claim that compliance is so burdensome as to entitle it to reimbursement for the costs of compliance in accordance with the opinion filed this day.

Costs to appellee.

By the Court:

/s/ Dana H. Gallup  
Clerk.

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Costs in favor of appellee are taxed at Nothing (\$0.00) as appellee filed no verified bill.

Certified and issued as  
informal mandate under F.R.A.P.  
41 on JAN 10 1979

/s/Dana H.Gallup  
Clerk.

Attest to  
True Copy

FREDERICK R.DeCESARIS  
Clerk

By/s/Michele L.Hastings  
Deputy Clerk.

(cc: Messrs. Foster and Sammartino).

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

---

No. 78-1109,

UNITED STATES OF AMERICA  
Plaintiff, Appellee

v.

TIVIAN LABORATORIES, INC.,  
Defendant, Appellant.

---

ORDER OF COURT

Entered May 3, 1978

Appellant's motion for a stay is hereby denied. The only immediate effect of the district court's order is that Tivian Laboratories, Inc. will be required, prior to review in

this court, to disclose to the Environmental Protection Agency information concerning Tivian's use of certain named chemicals. If appellant should prevail, this court can fashion relief to bar the use by the government of the information so acquired in future proceedings, whether civil or criminal. Moreover, appellant has not persuaded us on the present record of the substantial likelihood of its prevailing on the merits. In these circumstances, the stay will not be granted, Barthuli v. Board of Trustees, 46 U.S.L.W. 3212 (U.S. Sept. 20, 1977) (Rehnquist, Circuit Justice).



To enable this court to carry out a complete review, the present record is to be supplemented with a transcript of the hearing of February 23, 1978, which would appear to contain the decision of the district court read into the record. See district court order and judgment of February 28, 1978. Appellant is ordered to obtain such a transcript to be included in the record on review.

The motion for stay of order and judgment of the district Court is hereby denied.

By the Court:

/s  
Clerk.

(Cert. c. Clerk, U.S.D.C., Mass;  
cc: Messrs. Foster and Sammartino)

IN THE DISTRICT COURT OF THE  
UNITED STATES FOR THE DISTRICT  
OF RHODEISLAND

UNITED STATES OF AMERICA	}	C.A. NO.76-0167
PLAINTIFF		
VS	}	
TIVIAN LABORATORIES, INC.		
DEFENDANT		

NOTICE OF APPEAL

Notice is hereby given that Tivian Laboratories Inc., defendant above named, hereby appeals to the United States Circuit Court of Appeals for the First Circuit from the Order and Judgment granting plaintiff's Motion for Summary Judgment pursuant to Rule 56, Federal Rules of Civil Procedure against defendant, Tivian Laboratories, Inc. entered in this action on the 28th day of February 1978.

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Tivian Laboratories, Inc.  
by its attorney

Richard K. Foster  
Pole 121 Great Road  
Lincoln, Rhode Island  
02865  
401-724-3042

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IN THE DISTRICT COURT OF  
THE UNITED STATES FOR THE  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA )

v.

TIVIAN LABORATORIES, INC. )

) CIVIL  
) ACTION NO.  
76-0167

ORDER AND JUDGMENT

This cause came on for hearing  
on motion of plaintiff for a  
summary judgment pursuant to Rule  
56 of the Federal Rules of Civil Pro-  
cedure; the Court having considered  
the pleadings in the action and  
memoranda filed by the parties, and  
due deliberation having been made,  
and the decision of the Court having  
been read, the Court having found  
that there is no genuine issue as to  
any material fact, it is hereby

ORDERED, that plaintiff's motion for a summary judgment is in all respects granted; it is further

ORDERED, that defendant shall supply the information duly requested by the Environmental Protection Agency in its letter of October 16, 1975, forthwith; and it is further

ORDERED, that the issue of the assessment of civil penalties as set forth in Title 33, United States Code, Section 1319 (d), remain open until further Order of the Court.

By Order,

/s/ Kathleen M. Powers  
Deputy Clerk

ENTER:

/s/ Raymond J. Pettine  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
2/28/78

IN THE DISTRICT COURT OF THE

UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA )

v. )

TIVIAN LABORATORIES, INC. )

CIVIL ACTION  
NO. 76-0167

ORDER AND JUDGMENT

This cause came on for hearing on motion of plaintiff for a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure; the Court having considered the pleadings in the action and memoranda filed by the parties, and after hearing counsel for the respective parties and due deliberation having been made, and the decision of the Court having been read, the Court

having found that there is no genuine issue as to any material fact, it is hereby

ORDERED, that plaintiff's motion for a summary judgment is in all respects granted; it is further

ORDERED, that defendant shall supply the information duly requested by the Environmental Protection Agency in its letter of October 16, 1975, forthwith; and it is further

ORDERED, that the issue of the assessment of civil penalties as set forth in Title 33, United States Code, Section 1319(d),

Attest to True Copy

FREDERICK R. DeCESARIS  
Clerk

By /s/Michele L. Hastings  
Deputy Clerk

(undated)

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	)	
	)	
PLAINTIFF,	)	CIVIL
	)	ACTION
v.	)	NO.
	)	CA 76
TIVIAN LABORATORIES, INCORPORATED,	)	0167
	)	
DEFENDANT.	)	
	)	

COMPLAINT

1. This is a civil action to impose civil penalties against the defendant for violating Section 308(a) of the Federal Water Pollution Control Act Amendments (FWPCA), 33 U.S.C. ss1318(a), and to compel the defendant to provide the information sought by the Environmental Protection Agency ("EPA") pursuant to Section 308 of the FWPCA, 33 U.S.C. ss1318, and Section 114(a) of the Clean Air Act, 42 U.S.C. ss1857c-9(a).

2. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. ss1345, 33 U.S.C. ss1319(b), and 42 U.S.C. ss1857-8(a)(3).

3. Defendant Tivian Laboratories, Incorporated (the "Company"), is a corporation organized under the laws of Rhode Island.

4. The Company employs approximately 15 persons in the production of plating solutions, resins, waxes, and chemical specialties for metal casting and finishing as well as fundamental research and development.

5. EPA is gathering information from sources suspected of using polychlorinated biphenyls and similar compounds (including chlorinated terphenyls). EPA believes that

Tivian Laboratories uses or handles certain of these chemicals, which, EPA has determined, constitute a significant hazard to human health and the environment. EPA seeks this information for the purpose of developing effluent limitations, emission standards, and other strategies to control these chemicals under the FWPCA and the Clean Air Act.

6. On October 28, 1975, a United States Marshal served upon the Company a letter dated October 16, 1975, from EPA requiring the submission of certain specified information regarding the Company's use and handling of polychlorinated biphenyls ("PCB"s"), chlorinated terphenyls, and other similar compounds or mixtures. This request was made pursuant to authority granted EPA by Section 308 of the FWPCA and Section 114 of the Clean



Air Act.

7. Marvin S. Antelman, president of the Company and registered Agent for receipt of service for the Company, refused to accept service prior to October 28, 1975, and service was accomplished by service on the Secretary of State.

8. Pursuant to the letter dated October 16, 1975, the Company was required to submit information on November 7, 1975, and again on November 17, 1975.

9. In a letter dated November 1, 1975, to the U.S. Marshal, Providence, Rhode Island, Mr. Andrew Melechinsky declined on behalf of the Company to respond to EPA's request for information. To date, the Company has failed to comply

with that request.

10. Defendant has thereby violated Section 308(a) of the FWPCA, 33 U.S.C. ss1318(a), and Section 114(a) of the Clean Air Act, 42 U.S.C. ss1857c-9(a), on every day since November 7, 1975.

WHEREFORE, plaintiff, the United States of America, respectfully prays:

1. That the defendant Tivian Laboratories, Incorporated, be assessed a civil penalty of \$10,000 per day of violation of Section 308(a) of the FWPCA, in accordance with Section 309(d) of the FWPCA, 33 U.S.C. ss1319(d).

2. That the defendant Tivian Laboratories, Incorporated, be ordered to supply the information duly requested by EPA in its letter of October 16, 1975,



within five (5) days of the effective date of said order. 33 U.S.C. ss1319(b), 42 U.S.C. ss1857c-8(b).

3. That the Court grant such other relief as it may deem just and proper.

Respectfully submitted,

LINCOLN C. ALMOND  
United States Attorney

By: /s/  
EVERETT SAMMARTINO  
Assistant United States  
Attorney